

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2397

United States of America,

Appellee,

v.

Abel Cisneros-Gallegos, also known as
Javier Favela, also known as Alfredo
Andrade-Cisneros,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: January 6, 2003
Filed: January 8, 2003

Before LOKEN, FAGG, and MURPHY, Circuit Judges.

PER CURIAM.

Abel Cisneros-Gallegos pleaded guilty to illegal reentry following deportation after conviction for an aggravated felony, in violation of 8 U.S.C. § 1326. At sentencing, Cisneros-Gallegos moved for downward departure, arguing that his criminal history score overrepresented his actual criminal history, and that his base offense level should not have been increased by 12 levels for a prior drug conviction.

The district court¹ denied the motions and sentenced Cisneros-Gallegos to 46 months imprisonment and 3 years supervised release. On appeal, counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), raising as possible issues the denial of the departure motions.

We do not review the denial of Cisneros-Gallegos's downward-departure motions. The district court explicitly acknowledged its authority to depart with regard to one motion, and there is no indication that the court believed it lacked authority to depart with respect to the other. See United States v. Koons, 300 F.3d 985, 993-94 (8th Cir. 2002); United States v. Lopez-Arce, 267 F.3d 775, 783-84 (8th Cir. 2001). Further, we have reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), and we find no nonfrivolous issues.

Accordingly, we grant counsel's motion to withdraw, and we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The HONORABLE RICHARD G. KOPF, Chief Judge, United States District Court for the District of Nebraska.